

## City of Falls Church

Meeting Date:  9-30-09	Title: Ordinance To Repeal And Reenact §20-62 Of Chapter 20 Of The Falls Church City Code, "Motor Vehicles And Traffic, Article VII, "Towing And Immobilization Of Vehicles," Section 20 – 62 "Removal Of Trespassing Vehicles By Owners Of Parking And Other Lot Or Building" In Accordance With The Code Of Virginia As Of July 1, 2009 (TO9-12)	Agenda No.:  10 (b) (1)
<b>Proposed Motion: MOVE passage of (TO9-12) on first reading, direct staff to continue to work with the interested parties on the proposed ordinance, advertise a public hearing and second reading for Monday, October 26, 2009.</b>		
Originating Dept. Head: Harry W. Reitze, Chief of Police 703.248.5057 Mary Gavin, Deputy Chief of Police 703.248.5069		Disposition by Council:
<b>City Manager:</b> Wyatt Shields 703.248.5004 <b>FWS 9/24/09</b>	<b>City Attorney:</b> John Foster 703.248.5010 <b>JEF 9-24-09</b>	<b>CFO:</b> John Tuohy 703.248.5092 <b>JHT 09-24-2009</b>

**REQUEST:** Council is requested to amend the City towing ordinance (Section 20-62) as follows:

1. require authorization for each tow by the property owner or his agent, who cannot be related to, an employee of, or have a financial interest in the tow operator. Such authorization must be in writing during the normal business hours and may be verbal during non business hours; and
2. require that a photograph or other documentary evidence be obtained substantiating the reason for each tow; and
3. clarify and improve the signage requirements to more adequately and uniformly caution citizens about being towed for illegal parking; and
4. reduce the maximum allowable tow fee from \$100 to \$50 per tow.

**RECOMMENDATION:**

The Towing Advisory Board (TAB) met twice to review possible changes to the existing towing ordinance. The TAB came to a split vote of 2 to 1 on the recommendation to have a secondary authorizing signature for all private property tows during normal business hours. The TAB voted 3-0 to recommend the new proposed signage requirements, and to raise fees from \$100 to

\$125 per tow and to increase the storage fee from \$40 to \$50 per day, both of which would be the maximum allowed by state law.

The City Manager's recommendation is aligned with the majority TAB recommendation on the issues of signage and the issue of secondary authorization. However, the City Manager recommends reducing the maximum tow fee from \$100 to \$50 per tow, and holding the storage fee at \$40, as currently allowed. The draft ordinance presented below reflects the City Manager's recommendations.

BACKGROUND: In 2006, the City Council adopted amendments to the City towing ordinance that were designed to regulate non-consensual tows in the City in a more effective manner. Since that time, statistics kept by city police on the volume of tows as well as written complaints by citizens indicate that further regulation, as allowed by state law, may be necessary.

City police and economic development personnel have attempted to work cooperatively with the business community and the tow operators to moderate some of the towing practices that generate complaints, particularly in commercial areas. After several failed attempts, staff discussions began in the late spring and the assistance of the Towing Advisory Board (TAB) was enlisted. An initial staff recommendation of proposed changes to the ordinance was presented at a meeting of the TAB on June 24, 2009. At that time, staff requested that representatives of the towing companies present at the meeting offer alternative means of addressing citizen complaints about "quick tows" or "predatory tows", wherein citizens cars are too often being towed within 5-30 minutes after their leaving the premises, to perhaps run a quick errand to the library or other nearby buildings. Two months was allotted for possible alternative measures to be advanced by the towing representatives but at the second TAB meeting on August 31, 2009, no alternatives were presented for consideration.

The proposed changes to the City's towing ordinance below are in compliance with State Code Section 46.2, and are offered as a way to remedy a difficult situation at a few problem locations within the City. The provisions are intended to assign more control over towing activity to the business or property owner, as opposed to being entirely in the control of the towing operators. The provisions are intended to address complaints by those who have been towed, as well as complaints from businesses about the possible loss of customers due to overly aggressive towing.

The proposed ordinance changes include:

1. require authorization for each tow by the property owner or his agent, who cannot be related to, an employee of, or have a financial interest in the tow operator. Such authorization must be in writing during the normal business hours and may be verbal during non business hours; and
2. require that a photograph or other documentary evidence be obtained substantiating the reason for each tow; and
3. clarify and improve the signage requirements to more adequately and uniformly caution citizens about being towed for illegal parking.

4. reduce the maximum allowable tow fee from \$100 to \$50 per tow.

<b>Current Private Property Towing Charges For Northern Virginia Jurisdictions 9/21/09</b>					
<b>Jurisdiction</b>	<b>Base Tow Fee (vehicle less 7500 lbs.)*</b>	<b>Storage fee for first 24 hours</b>	<b>Storage Fees after first 24 hours</b>	<b>Drop fee (before removal from premises)</b>	<b>Other Info/Charges</b>
<b>Falls Church</b>	\$100 **	\$0	\$40	\$25	New proposal increases base tow to \$125 and storage fees after 1st 24 hours to \$50 per day.
<b>Arlington County</b>	\$115	\$0	\$50	\$25	
<b>Fairfax City</b>	\$125	\$0	\$55	\$25	Extra charges for: extensive recovery fee - \$100, extensive cleanup - \$50, after hours/weekends and holiday release - \$25, mileage charge of \$4 per mile for any destination outside of Fairfax City.
<b>Alexandria City</b>	\$75	\$0	\$30	\$25	Extra \$10 for after hours and weekends pick up but no more than one extra inconvenience charge per tow
<b>Fairfax County</b>	\$50*	\$0	\$25		\$15 after hours fee but no holiday and weekend extra fees, \$35 special equipment fee
* State permitted max. is \$125 ** proposed to be reduced to \$50					

Statistics for tows in the City of Falls Church from 2006 to date in 2009 are as follows:

**Calendar Year 2006**

Overall Tows: 328

Most frequent shopping centers:

Broaddale: 44

Eden Center: 7

Falls Plaza: 11

Residential: 118

**Calendar Year 2007**

Overall Tows: 351

Most frequent shopping centers:

Broaddale: 99

Eden Center: 56

Falls Plaza: 9

Residential: 65

**Calendar Year 2008**

Overall Tows: 224

Most frequent shopping centers:

Broaddale: 29

Eden Center: 35

Falls Plaza: 7

Residential: 52

**Calendar Year 2009 to date**

Overall Tows: 282

Most frequent shopping centers:

Broaddale: 76

Eden Center: 1

Falls Plaza: 192

Residential: 57

Statistics of tow complaints filed with the Police Department are as follows:

**Calendar year 2007**, the Police Department received three complaints. The three complaints were lodged against Pete's Towing Service. All complaints were unsubstantiated.

**Calendar year 2008**, the Police Department received five complaints. One for Al's Towing, Blair's Towing, Dynamic Towing, and two for Pete's Towing. All complaints were unsubstantiated.

**Calendar year 2009** to date, the Police Department has received ten complaints. Eight have been lodged against Pete's Towing, and two against Henry's Towing. In the complaints lodged against Pete's Towing seven were found unsubstantiated, one was found in violation because of illegal signage. The two complaints lodged against Henry's Towing are still under investigation.

**FISCAL IMPACT:** No additional costs are anticipated beyond resources already allocated for oversight of this activity.

**TIMING:** Immediate.

(TO9-12)

ORDINANCE TO REPEAL AND REENACT §20-62 OF CHAPTER 20 OF THE FALLS CHURCH CITY CODE, "MOTOR VEHICLES AND TRAFFIC, ARTICLE VII, "TOWING AND IMMOBILIZATION OF VEHICLES," SECTION 20 – 62 "REMOVAL OF TRESPASSING VEHICLES BY OWNERS OF PARKING AND OTHER LOT OR BUILDING" IN ACCORDANCE WITH THE CODE OF VIRGINIA AS OF JULY 1, 2009

THE CITY OF FALLS CHURCH, VIRGINIA, HEREBY ORDAINS THAT Chapter 20, "MOTOR VEHICLES AND TRAFFIC," Section 20 – 62, "REMOVAL OF TRESPASSING VEHICLES BY OWNERS OF PARKING AND OTHER LOT OR BUILDING" of the Code of the City of Falls Church, VA, be amended and reenacted as follows:

## ARTICLE VII. TOWING AND IMMOBILIZATION OF VEHICLES

**Sec. 20-60. Towing advisory board.**

**Sec. 20-61. Vehicle immobilization devices.**

**Sec. 20-62. Removal of trespassing vehicles by owners of parking or other lot or building.**

(a) *Definitions:*

- (1) *Towing and recovery operator....*
- (2) *Tow truck driver....*
- (3) *Tow truck....*
- (4) *Custodian....*
- (5) *Parking lot, parking area, parking space, or parking building....*

(b) It shall be lawful for any owner....

- (1) The name and business phone....
- (2) A description of the vehicle towed....
- (3) The location of trespassing vehicle....
- (4) Where the vehicle is towed; and
- (5) The name, address, and the telephone number of the owner....

Any violation of this subsection dealing with the notice....

(c) ~~The towing and recovery operator performing a tow shall obtain authorization of the owner, operator, or lessee of the property from which the vehicle is towed, or the authorized agent thereof. For the purposes of this subsection, "authorized agent" may include a representative of the towing and recovery operator. The towing and recovery operator shall maintain for public inspection at its business office and at its storage property, copies of all contracts or other~~

documents that appoint the operator as the authorized agent for the owner, operator or lessee of the property for purposes of authorizing tows from the property.

**Prior to removing any vehicle from the premises, the towing and recovery operator performing a tow shall obtain a photograph of the vehicle substantiating the reason for removal, and shall obtain the written authorization of the owner of the property from which each vehicle is towed, or his agent. Such written authorization shall be in addition to any written contract between the operator and the owner of the property or his agent. If the tow occurs outside the normal business hours of the owner of the property, the towing and recovery operator performing a tow shall obtain the verbal authorization of the owner of the property or his agent prior to removing any vehicle from the premises. For the purposes of this subsection, "agent" shall not include any person who either (a) is related by blood or marriage to the towing and recovery operator or (b) has a financial interest in the towing and recovery operator's business or (c) is an employee of the towing and recovery operator's business. The towing and recovery operator shall maintain for public inspection at its business office and at its storage property, copies of all contracts or other documents between the operator and the property owner or his agent for purposes of authorizing tows from the property, and such contracts or documents shall provide the names of those designated as "agent" for the purposes of authorizing tows. The requirements of this subsection shall not apply to properties that contain a residential use.**

(d) A written receipt shall be prepared by the tow truck service for each tow. The written receipt shall contain in legible English:

- (1) The name, and title or business of the person authorizing the tow;
- (2) The name and address of the tow truck service;
- (3) The street address from which the vehicle was towed;
- (4) The date and time the vehicle was removed from the property;
- (5) The reason for the tow;
- (6) An itemized list of initial fees for towing and storage; and
- (7) A space for the signatures of the vehicle owner or custodian and the one releasing the vehicle from the tow truck service.

A copy of this receipt, including an itemized list of all fees for towing and storage paid when the vehicle was released and the signature spaces completed shall be kept by the tow truck service for one (1) year, **along with a photograph substantiating the reason for each tow, and be available for inspection by the city police department. A copy of this receipt, including all items listed in this subsection and** an itemized list of all fees for towing and storage paid when the vehicle was released and the signature spaces completed, shall be given to the vehicle owner or custodian upon payment, ~~however, such a copy need not include the name, title, or business of the person authorizing the tow.~~

(e) All businesses engaged in towing vehicles without the consent of their owners shall prominently display (i) at their main place of business and (ii) at any other location where towed vehicles

may be reclaimed a conspicuous sign that indicates the maximum charges allowed by the city. In addition, when the towed vehicle is reclaimed, in addition to the receipt, the person recovering the vehicle shall receive the name and non-emergency telephone number of the person in the city police department responsible for handling consumer complaints regarding towing.

- (f) The towing or removal or authorization for towing or removal of vehicles under this section or their immobilization pursuant to Section 46.2-1231 of the Code of Virginia shall not be lawful unless such parking lot, parking area, space therein or part thereof or other lot or building shall have prominently posted at, and legible from, all entrances thereto a sign stating in letters not less than three (3) inches in height that trespassing vehicles are subject to towing or immobilization or both at the expense of the owners or custodians of such vehicles, the words "Private Parking," a pictorial symbol of a tow truck, and the hours and days of the week trespassing vehicles may be removed from the property, or words of like effect; provided, however, that the requirement for signs shall not apply on any parcel of property used at the time of removal for one (1) single family residence or one (1) two family residence. Each sign must also contain a telephone number, which is answered by a person twenty-four (24) hours per day, for the tow truck service which removed the trespassing vehicle. Additionally, in the event that the restricted parking spaces or area are a part of a larger parking lot, the restricted portions of the parking area must be clearly and conspicuously identified.
- a sign at all vehicle entrances to the property which clearly, conspicuously, and legibly discloses that vehicles parked without permission will be towed. Such signs shall be posted so that the locations on the property subject to towing shall be clearly identified. The signs shall meet the following requirements and include the following information:**

1. **each sign shall be not less than 12 X 18 inches;**
2. **the lettering on each sign shall be as follows: "towing at owner's expense" not less than three (3) inches in height; "hours and days of the week when trespassing vehicles are subject to towing" not less than one (1) inch in height and placed just above the tow truck symbol; the tow truck symbol, not less than two (2) inches in height. Other lettering may vary in size but in no case be less than one-half (1/2) inch in height;**
3. **each sign shall contain a pictorial symbol of a tow truck;**
4. **each sign shall contain a statement to the effect that trespassing vehicles are subject to towing and storage at the expense of the vehicle owner;**
5. **each sign shall state the hours and days of the week when trespassing vehicles are subject to towing;**
6. **each sign shall provide the telephone number of the responsible towing and recovery operator to contact for information related to the location of vehicles towed from the property, which telephone number shall be answered by a person twenty-four (24) hours each day;**



265 7. each sign shall provide the non-emergency telephone number of the City Police;  
266 and

267  
268 8. there will be a grace period of one (1) year from the date of adoption to bring all  
269 signs into compliance.

270  
271 The requirement for signs shall not apply on any parcel of property used at the time of  
272 removal for one (1) single-family residence or one (1) two-family residence.

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274 (g) No towing and recovery operator shall be liable for damages ....

275 (h) Notwithstanding the foregoing provisions of this section....

276 (i) Except as otherwise specifically provided....

277 (j) It shall be unlawful for any reason to tow....

278 (k) All tow trucks operated by a ....

279 (l) In lieu of having a trespassing vehicle removed....

280 (m) A tow truck operator, tow truck driver, and storage ....

281 (n) No hookup and initial towing fee shall exceed ~~one hundred dollars (\$100)~~ **fifty dollars (\$50.00).**  
282 No charge shall be made for storage and safekeeping for a period of twenty-four (24) hours or  
283 less. Except for fees or charges by this section or revisions to this section pursuant to section  
284 46.2-1233, no other fees or charges shall be imposed during the first twenty-four-hour period.  
285 Vehicle storage fees after the first twenty-four (24) hours may not exceed forty dollars ~~(\$40.00)~~  
286 per day.

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290 1<sup>st</sup> Reading: 9-30-09

291 2nd Reading: \_\_\_\_\_

292 (TO9-12)

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